

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

BENJAMIN FRANCISCO CADILLO,

Defendant.

Case No.: 12-00391 SBA (KAW)

REPORT AND RECOMMENDATION
REGARDING GUILTY PLEA

Magistrate Judge Kandis A. Westmore recommends that the district judge accept Defendant Benjamin Francisco Cadillo's guilty plea entered in open court on November 27, 2012. Specifically, the defendant pleaded guilty pursuant to a written plea agreement to Count One of the superceding information charging him with possession of a firearm in furtherance of a drug trafficking crime, in violation of 21 U.S.C. § 924(c)(1)(A)(i). The magistrate judge makes the following findings:

1. On the hearing date set forth above, with the assistance of counsel, the defendant waived his right to enter his guilty plea before a district judge and instead consented to enter his plea in a hearing in magistrate court. Specifically, the magistrate judge advised him that he had a right to plead guilty in district court, and that he could waive that right and consent to enter his plea in a plea hearing in magistrate court. The magistrate judge also advised him that she would issue a written report recommending that the district judge accept the guilty plea, that the district judge would review that recommendation and determine whether to accept the guilty plea, and that the district judge and not the magistrate judge would sentence him. The magistrate judge also advised him of the procedures (also set forth at the end of this recommendation) for challenging

1 the magistrate judge's recommendation. The defendant then waived his right to proceed in district
2 court in open court and in writing and consented to the magistrate judge's conducting the plea
3 hearing.

4 2. The magistrate judge conducted a full plea hearing in the manner set forth in Federal
5 Rule of Criminal Procedure 11. In particular, the magistrate judge reviewed, and the defendant
6 acknowledged that he understood, the following: (a) the nature of each charge and the maximum
7 penalties, as set forth in Fed. R. Crim. P. 11(b)(1) (G)-(L); (b) the effect of the advisory
8 Sentencing Guidelines and 18 U.S.C. § 3553(a), *see* Fed. R. Crim. P. 11(b)(1)(M); and (c) the
9 rights he was waiving by pleading guilty, *see* Fed. R. Crim. P. 11(b)(1) (A)-(F). The court
10 reviewed the specific provisions of the plea agreement regarding waiving the right to appeal or
11 collaterally attack the sentence. *See* Fed. R. Crim. P. 11(b)(1)(N). The magistrate judge also
12 determined that there was a factual basis for the guilty plea. *See* Fed. R. Crim. P. 11(b)(3).

13 3. The plea agreement itself was disclosed in open court, *see* Fed. R. Crim. P. 11(c)(2),
14 and the magistrate judge advised the defendant as follows:

15 A. To the extent that the plea agreement was an agreement of the type specified in Rule
16 11(c)(1)(A) or (C), the district judge may accept the agreement, reject the agreement,
17 or defer a decision until the district judge reviewed the presentence report. Also, to
18 the extent that the district judge accepts the agreement, the agreed disposition will be
19 reflected in the judgment. To the extent that the district judge rejects the agreement,
20 it will inform the parties, advise the defendant that it is not required to follow the
21 plea agreement, and give the defendant an opportunity to withdraw the plea. If the
22 district judge rejects the plea agreement and the defendant does not withdraw his
23 plea, then the court may dispose of the case less favorably toward the defendant than
24 the plea agreement contemplated.

25 *See* Fed. R. Crim. P. 11 (c)(3)-(5).

26 4. The magistrate judge also addressed the defendant personally in open court, and
27 determined that the plea was voluntary and did not result from force, threats, or promises (other
28 than the promises in the plea agreement). *See* Fed. R. Crim. P. 11(b)(2).

5. After the advisements set forth in Rule 11, and summarized here, the defendant
pleaded guilty as summarized above. The magistrate judge found that he was fully competent and
capable of entering an informed plea, that he was aware of the nature of the charges and the

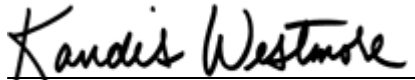
1 consequences of the guilty plea, and that the guilty plea was knowing and voluntary and
2 supported by an independent factual basis. This court thus recommends to the district judge that
3 it accept the defendant's guilty plea.

4 6. Any party may serve and file specific written objections within fourteen days after
5 being served with a copy of this order. *See* 28 U.S.C. § 636(b)(1); Fed. R. Crim. P. 59. Failure to
6 file objections within the specified time may waive a party's right to review. *See* Fed. R. Crim. P.
7 59(b).

8 7. At the parties' request, this court set the matter for sentencing before the district court
9 on February 19, 2013 at 10:00 a.m.

10 IT IS SO RECOMMENDED.

11 Dated: November 29, 2012

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13 KANDIS A. WESTMORE
14 United States Magistrate Judge
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United States District Court
Northern District of California